

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

DIVORCE CAUSE NO. 7 OF 2000

E K OPETITIONER

VERSUS

H O ORESPONDENT

JUDGMENT

According to the petitioner she got married to H O O at the District Registry, Kilifi District in Coast Province. She reckoned that by then, she was a spinster. Consequently, after the celebration of marriage on 24th January, 1990, the petitioner lived and cohabited with the respondent for about a week in Kilifi. Unfortunately, the couple was **not** blessed with any child during the subsistence of the marriage.

According to the PW1 – E K O (*hereinafter referred to as the petitioner*) her husband later came to Nakuru. Though the petitioner was transferred to Nakuru in December, 1990, the respondent was always avoiding her. The petitioner confirmed that she has **not** seen the respondent since December, 1990. Besides the above, the petitioner conceded that when she came to Nakuru, her husband was staying with an unknown woman. The petitioner has urged the Court to dissolve her marriage since the respondent has abandoned her in favour of another woman. In addition to the above, she has pointed out that her husband has committed adultery.

On the other hand, the respondent has denied the allegations that were levelled against him by the petitioner. In his reply to the petition, the respondent stated that it was actually the petitioner who had deserted him after she observed that his business was **not** doing well. Apart from the above, the respondent also stated that the petitioner later became adulterous, cruel and refused to join him in their matrimonial home in Nyakach. Lastly, the respondent accused the petitioner of malpractices and of conniving with third parties to file the petition.

On 25th September, 2003 the case was fixed for hearing before me. Though the respondent was duly served for the hearing, he never turned up. In exercise of the Courts discretion, I adjourned the case to allow the respondent to defend himself from what had been alleged against him. Unfortunately, on 22nd November, 2004, the respondent failed to turn up in Court despite having been served. Despite his absence, the Court proceeded to hear the petitioner's evidence. Having done so, I hereby find that her evidence has **not** been challenged nor controverted. This Court has also carefully considered the reply to the petition. The totality of the evidence on record is that the couple has **not** stayed together as man and wife for the over 10 years. In addition, the respondent is already staying with somebody else who may be more dear to him. It is obvious that the marriage has broken irretrievably and the couple are unlikely to reconcile. The upshot is that I find that the petitioner has proved her case on a balance of probabilities and hence the marriage has to be dissolved on the ground of desertion by the husband.

In conclusion, I hereby enter judgment in favour of the petitioner on the following terms:

- (a) *That the marriage is hereby dissolved.*
- (b) *That a decree nisi be issued and be confirmed after 6 months.*
- (c) *Costs to the petitioner in any event.*

MUGA APONDI

JUDGE

1ST APRIL, 2005

Judgment read, signed and delivered in open Court in the presence of Mr. Gor Kisila for Mr. Obwatinya.

MUGA APONDI

JUDGE

21ST APRIL, 2005